



**PREMIER and
Airgas and related member companies
Member Commitment Agreement
Contract # PP-MM-067
Cylinder Gases Agreement - Exhibit L-1**

Note: Any Participating Member, at its option, shall have the ability to further negotiate the terms within this document with Seller.

Airgas[Regional Company Name]....., Inc., with offices at....[Airgas Regional Company Address]...., (“Seller”), and [Customer] with offices at..... (“Buyer”) for and in consideration of the mutual premises and covenants set forth herein and intending to be legally bound thereby, agree as follows:

1. **REQUIREMENTS:** Buyer shall buy from Seller its present and future requirements of industrial, specialty, and/or medical gases, including carbon dioxide, or any substitute for any Product, at listed location(s) or at any relocated, expanded, or new Buyer location(s), in gaseous and/or liquid form (“Products”), in suitable containers including, without limitation, cylinders, liquid containers and including on-site generation, upon the terms and conditions set forth in this Agreement, including prices as may from time to time be adjusted as authorized by Premier or on the anniversary date of this agreement and reflected on any Rider or Addendum to this Agreement. This Agreement shall also include such “Other Items for Sale” as may be designated in any attachment or amendment hereto
2. **TERM:** The initial term of this Agreement shall be for (**Specify Term , Min 5 Years**) years and shall commence upon the later of the date of first delivery of Product by Seller hereunder; or the date signed by Seller herein below; or, in the event Buyer is contractually bound and prohibited from entering into this Agreement by any prior agreement, then upon the earliest expiration or earlier termination of such prior agreement, and thereafter shall automatically renew for successive one (1) year terms unless terminated at the end of (a) the initial term or (b) any renewal term, as the case may be , upon not less than twelve (12) months’ prior written notice by either party. If Seller relocates any gas or liquid storage tanks and related equipment (“Equipment”) or provides additional Equipment to meet Buyer’s gas requirements, then a new initial term shall be effective upon the date of first delivery of such Product utilizing the relocated, replacement or additional Equipment.
3. **PRICING AND PAYMENT:** The pricing for Products and Other Items of Sale purchased hereunder shall be as set forth in this Agreement or any amendment hereto. Terms of payment are Net 45 Days or as agreed to and approved for credit worthiness. In the event Buyer fails to make any payment when and as due, Seller may charge Buyer interest at the highest rate permitted by law calculated from and excluding the due date thereof to and including the date of payment.
4. **RENTAL/FACILITY FEES:** Seller shall maintain records of cylinder deliveries and returns hereunder, and shall charge the Buyer demurrage or rental at the Premier Contract published rate. In the event that any Equipment is installed by Seller or its representative at Buyer’s facility for storage of Product, Buyer shall pay to Seller, for the availability of said Equipment for use hereunder, a Facility Fee computed by Seller for each item of Equipment installed by Seller, base Premier contract pricing and fees are subject to change annually or as negotiated with member, cartage may apply.
5. **CYLINDER RETURN:** Buyer shall return, in good condition, all cylinders including cylinders complete with caps and fittings and shall pay Seller the replacement value of any lost or damaged cylinders, caps or fittings. Buyer shall not permit cylinder or other storage containers furnished hereunder to be filled with any product not furnished by Seller or Seller’s authorized representative.
6. **SITE REQUIREMENTS:** Buyer shall promptly furnish an accessible, secure location (“Site”) for Seller’s Equipment at each of its facilities at which Products are required to enable suitable delivery and storage of such Products; including all foundations, lighting, fences, pipes and other preparation and equipment required for the safe distribution of Product(s) from the Site. The Buyer shall also provide at the Site, at Buyer’s cost, all electricity or other utilities, including, if necessary, phone lines, as well as all licenses and permits required in connection with use of the Site.
7. **INSTALLATION:** Equipment provided by Seller shall be installed and maintained in good repair and operation by Seller, and billed to Buyer at Seller’s standard rates. Buyer may provide its own equipment in which event Seller shall have no obligation to maintain the same. Buyer shall have no ownership interest in the Equipment installed at the Site by the Seller and shall keep same free of any and all liens or claims of any kind. Buyer shall pay Seller’s standard freight charges for the Equipment, FOB Seller’s plant or shipping point of the Equipment.
8. **ACCESS:** Authorized representatives of Buyer, Seller and/or Seller’s representatives shall have access at all times to the Site, but Buyer shall deny access to all others. Buyer shall not alter, adjust or repair any Equipment installed by Seller at Site. Buyer shall be responsible for any loss of, or damage to such Equipment unless arising as a direct result of Seller’s sole negligence. Seller shall not be liable for any delay in installation of any such Equipment that results from any cause beyond its reasonable control.
9. **EQUIPMENT CHANGE:** If in the sole judgment of Seller any Equipment installed by Seller shall become inadequate, including without limitation, because of a substantial change in Buyer’s requirements of Product, Seller shall have the right, at its own expense, to substitute a different size or type of Equipment and the Facility Fee shall be adjusted to reflect such substitutions. Seller shall have the right to remove such Equipment installed by it within ninety (90) days after the expiration or termination of this Agreement. Buyer’s obligation with respect to loss of, or damage to Equipment shall remain in full force and effect until Seller effects such removal. This Agreement will cover all mode changes, including but not limited to: cylinders to liquid containers, liquid containers to bulk storage vessels, bulk storage vessels to on-site generation, or any combination of the preceding.

10. **REMOVAL:** Buyer may require Seller to remove any of its Equipment from the Site prior to the end of any term by paying to Seller (a) a pro-rata share of the cost of installing such Equipment which reflects the balance of the term of this Agreement that is unexpired as of the date of such removal and (b) a removal fee. No such removal shall affect Buyer's obligation to purchase its requirements for Products from Seller. At the end of the term, Buyer shall pay a removal fee only.
11. **DELIVERIES:** (a) Seller or its representatives shall usually make all other deliveries of Product(s) and Other Items of Sale on regular business days between the hours of 8:00 a.m. and 5:00 p.m. Product may be delivered at other hours, upon agreement of the parties. In the event Buyer requests Seller to deliver at other hours, Seller shall employ its best efforts, but shall not be obligated to do so and Buyer shall pay all additional expenses incurred by Seller as a result of such special delivery; (c) Deliveries made during a strike or other labor disturbance affecting Buyer shall be at Buyer's sole risk. Buyer hereby indemnifies Seller from and against all costs, damages and losses ("Losses") arising out of any such delivery where such Losses incurred by Seller are abnormal to the delivery costs associated with delivering Products and Other Items of Sale to Buyer
12. **WARRANTY:** All Products, Other Items of Sale, cylinders and other containers furnished hereunder shall conform to the description thereof published by the manufacturer at the time of sale. THERE IS NO WARRANTY OF MERCHANTABILITY OR ANY OTHER WARRANTY; EXPRESS OR IMPLIED THAT EXTENDS BEYOND SAID DESCRIPTION.
13. **LIMITATION OF LIABILITY:** Seller shall not be liable for any direct, indirect, special, incidental, and/or consequential damages, arising or alleged to arise out of or in connection with any Product, Other Items of Sale, or Equipment sold or leased hereunder, whether such damage results from any negligent act or omission or is related to strict liability, or otherwise.
14. **REMEDY:** Buyer's exclusive remedy for the unexcused failure on the part of the Seller to deliver Product when required by Buyer, regardless of cause of such failure, including negligence, shall be to recover from Seller the difference between the cost to Buyer of any reasonable purchase of Product in substitution for Product not delivered and the lesser price of such quantity of Product hereunder. Buyer's exclusive remedy for each unexcused failure of Product to meet the Seller's standard purity levels shall be to receive a refund of the price of such non-conforming Product or replacement thereof with Product that meets such purity levels.
15. **FORCE MAJEURE:** Service and deliveries by the Seller are subject to and contingent upon floods, strike or other labor disturbances, fire, accidents, war, delays of carriers, inability to obtain raw materials, failures of normal sources of supply, restraints of government, (whether or not it later proves to be invalid), or any other similar or dissimilar cause beyond the Seller's reasonable control. Seller shall advise Buyer and Premier in writing of the reason for and anticipated length of any such delay. If any such cause affects only a part of the Seller's capacity to perform, Seller will allocate production and deliveries among its customers in a fair and reasonable manner.
16. **TAXES:** The prices set forth are exclusive of any amount of federal, state and/or local excise, sales, use, property, retailer's occupation, gross receipts or similar taxes which may be imposed upon this transaction. If any such excluded tax is determined to be applicable, the prices set forth herein shall be increased by the amount of such tax. In the event that the Buyer claims exemption from such taxes, a properly completed exemption certificate, which will be acceptable to the appropriate taxing authorities, must be provided. Should such certificate be found invalid upon audit, the Buyer agrees to bear the burden of any interest and penalties assessed.
17. **PRICE CHANGES:** Price increases shall be capped at 5% and increases based on the PPI Index and Premier Negotiations, implemented on the anniversary date of this agreement only after the initial 18 month price firm period of this agreement. Price increases follow the terms of the master Airgas Premier Agreement. In the event that Seller increases the price for a specific Product sold under this Agreement, such increase shall become effective fifteen (15) days after written notice is given to Buyer. If within fifteen (15) days of receiving such notice, the Buyer furnishes Seller with a copy of a bona fide firm written offer to sell such Product of the same quantities, of the same quality under similar circumstances at prices lower than such revised prices, Seller shall have fifteen (15) days within which to, at Seller's sole option, either meet the lower price, exclusive of surcharges, hazmat or regulatory compliance fees, or revert to the Seller's price in effect before the price increase. If the Seller does not exercise its option to so adjust the price, the Buyer may terminate this Agreement by giving the Seller thirty (30) days' written notice of such termination. If Seller does agree to meet such lower price, or revert to Seller's price in effect before the price increase, Seller shall have the right, at its option, to extend the term of this Agreement for the period of the initial contract term provided in this Agreement or term of competitive written offer. Buyer's rights regarding the terms of this Article shall not apply to any price increase arising as a result in whole or part, of compliance by Seller, or its suppliers with Federal, state, or municipal taxes, or government agency required audits or other regulations.
18. **COMPLIANCE:** It is a responsibility of the Buyer to comply with all relevant reporting obligations under the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. section 11001-11049 (EPCRA, also commonly known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III) resulting from the presence of the chemicals supplied under the Agreement. Further, it is a responsibility of the Buyer to warn and protect its employees and others exposed to the hazards posed by the Buyer's storage and use of the Product.
19. **CLAIMS:** All claims by Buyer having anything to do with any Product, Other Items of Sale, or Equipment furnished hereunder by the Seller shall be made in writing within ten (10) days after the delivery thereof and failure of Buyer to give such notice shall constitute a complete waiver by Buyer of any such claims and defense for Seller against any such claims.

20. **ITEMIZED CHARGES:** The total amount due from the customer (Buyer) may include various itemized charges, including: charges for the handling of hazardous materials and for compliance with laws and regulations concerning hazardous materials; charges for handling, delivery, and shipping; and/or charges for energy or fuel. None of the charges represent a tax or fee paid to or imposed by any governmental authority and all of the charges are retained by the Company (Seller). The Company (Seller) has not specifically quantified the relationship between the charges and the actual costs associated with the charges, which can vary by product, service, time and place, among other things.
21. **ACCEPTANCE:** This Agreement shall not be binding on Seller until it is accepted in writing by one of its duly authorized representatives. This Agreement with any Riders and/or Amendments represents the entire Agreement between Seller and Buyer in relation to the sale of Products and Other Items of Sale. Amendments to this Agreement shall be in writing and no acceptance by Seller of any purchase order, acknowledgment, or other document specifying different and/or additional terms or conditions shall be effective. This Agreement shall inure to the benefit of Seller and Buyer and their respective successors and assigns. Headings used herein are for reference only and not interpretation of the Agreement.

[Customer Name] _____ (Buyer)

[Airgas Regional Company Name] _____ (Seller)

Accepted By _____

Submitted By _____

Printed Name _____

Accepted By _____

Title _____ Date _____

Printed Name _____

Title _____ Date _____



Premier Cylinder Gases Rider

Initial Term Rider to Premier Agreement Dated [Date]

Product

Price/100SCF

Cylinder Size

Price/Cylinder

Daily Rent

*All other cylinders not listed but leased (rented), or purchased by Buyer from Seller hereunder will be priced at market level.

Hazmat Charge is \$ _____ per Delivery

Delivery Charge is \$ _____ per Delivery

Facility Fee(s) is/are \$ _____ per Month

The **initial** Term of this Agreement shall be for (min length 5 Years).

[Customer Name] _____ (Buyer)

[Airgas Regional Company Name] _____ (Seller)

Accepted By _____

Submitted By [Airgas Rep] _____

Title _____ Date _____

Accepted By _____

Title _____ Date _____

Title _____ | _____